IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 271

WILLIAM ADAMS,
Petitioner,

vs.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This is a Petition for a Writ of Certiorari to the Court of Appeals of Maryland. Petitioner was tried under indictment dated August 24, 1951, upon a charge of conspiracy to violate the lottery laws of Maryland, together with one Walter Rouse and others. Rouse asked for a severance and was tried separately. Petitioner was tried before a Judge, without jury, in the Criminal Court of Baltimore City and

found guilty. Upon his appeal to the Court of Appeals of Maryland, said conviction was affirmed. Petitioner has now applied for the Writ of Certiorari.

QUESTIONS PRESENTED

I.

Whether Certain Testimony Given by Petitioner before a Senate Committee was Admissible in his Trial on the Conspiracy Charge, in the light of the Federal Statute (U. S. C. A. Title 18, Sec. 3486).

II.

The Related Question of Whether or Not Petitioner's Rights under the Due Process Clause of the Fourteenth Amendment of the Constitution were Violated by his Conviction under the Evidence in the Case, including that referred to above.

STATEMENT OF THE FACTS

The chief witness against Adams was one Reuben Maurice Jones, whose testimony was clear and extensive and tended to show that Adams conspired to violate the lottery laws not only with him, but also with other persons, beginning in November of 1947.* A number of other persons were involved (33-34). Money taken in by the witness as a result of the numbers game was placed in the safe of the office of the Adams Realty Company, a business operated by Adams (35). Adams had deposited an amount as high as $29,000 therein (36). The witness continued in this business until March 1948, at which time he quit, leaving the money in the safe and turning the books of the operation over to Adams (37, 38), the witness stating that his reason for quitting was that there was no future in the business

* All references are to pages of the Record.

(38). Adams continued to carry on the business, together with others, and the witness testified that he saw Adams on a golf course in October of 1949, at which time he was still in the business, because the witness was kidding him about a number which had "hit" on the previous Saturday, and at that time, they discussed the possibility of Jones re-entering the operation (40). The witness had a further discussion with Adams in Adams' office in June of 1950, at which time they discussed the possibility of beginning a numbers operation with a man named Henry Parks (44-45). It will be noted that such testimony fixes Adams as continuing in the business, certainly to October 1949, and probably as late as June 1950.

There was admitted into evidence testimony to show that on July 2, 1951, Adams was summoned to testify before the Special Committee to Investigate Organized Crime in Inter-State Commerce of the United States Senate. He appeared and answered several questions propounded by the counsel for the Committee. At this time he freely testified as to his being involved in a lottery for over a year, stating that he had withdrawn from the business in May of 1950 (67). It is to be especially noted that certain questions which were asked him by the Committee, he declined to answer on the grounds that his answer to the question would tend to incriminate him, and was told by a member of the Committee (Senator Hunt), that there was no way the Committee could compel the witness to answer (71). Adams was accompanied by counsel at the time he appeared before the Committee.

The Maryland statute of limitations provides that prosecution for the crime of conspiracy must be commenced in Maryland within two years of the commission of the offense (Annotated Code of Maryland (1951 Ed.) Article 27, Sec.

46.) The foregoing constituted all of the testimony or evidence in the trial of this case which has any bearing on the questions presented here. Adams' indictment was handed down on August 24, 1951, which date is well within two years of October 1949, and of course any subsequent date. Petitioner objected to the introduction of any portion of his testimony before the Senatorial Committee by a motion to dismiss prior to his trial (21), stating in said motion that he had been forced to appear and compelled to testify under threat of possible imprisonment, citing U. S. C. A. Sec. 192, Title II, and further citing U. S. C. A. Sec. 3486, Title 18, which motion was overruled. Adams renewed his objection to the admissibility of the transcript from the Senatorial Committee at the time it was offered in evidence (64, 65). The opinion of the Court of Appeals of Maryland (Delaplaine, J.) affirming the conviction will be found in the Record at pp. 101 et seq.

ARGUMENT

Petitioner urges two specifications of error, namely:

(A) That by approving the introduction in evidence of Petitioner's testimony before the Crime Investigating Committee, the Court affirmed a violation of Petitioner's right under Section 3486 of Title 18 U. S. C. A., thereby denying the supremacy of an Act of Congress, and

(B) That the Court of Appeals of Maryland erred in affirming the judgment of the Criminal Court of Baltimore City, which action in the view of the Petitioner, was based upon violations of the rights of Petitioner under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

(1) Respondent urges that the admission into evidence of testimony indicating the statements made by the Petitioner before the Senate Investigating Committee was not error for these reasons:

First: That the immunity granted by Title 18 U. S. C. A. Section 3486 is not complete, and that Petitioner therefore, in testifying voluntarily before the Committee, has waived the privilege of self-incrimination;

Secondly: That the statute referred to above applies only to criminal prosecutions instituted by the Federal Government and in the Federal courts, and does not preclude the admission of such evidence in a criminal prosecution in a State court, for the reasons that (a) the Congress of the United States does not have the power to proscribe rules of evidence for the courts of the several States, and (b) that assuming that Congress has such power, the intention to exercise it has not been clearly manifested in Title 18 U. S. C. A. Sec. 3486; and

Thirdly: That the testimony given by Appellant before the Senate Committee was not inadmissible as an involuntary confession or admission in violation of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States or Article 22 of the Maryland Declaration of Rights.

Petitioner's testimony given before the Senate Crime Committee was given mainly without any claim of self-incrimination. He did refuse to answer certain questions on that ground and was told by a member of the Committee that it did not have the power to require an answer (71). It is well settled that the privilege of self-incrimination is waived unless invoked. *Henze v. State,* 154 Md. 332; *United States v. Murdock,* 284 U. S. 141, 76 L. Ed. 210.

In the Court of Appeals of Maryland, Respondent argued that Section 3486 of Title 18 gave him a complete immunity. He has now apparently abandoned this argument and is claiming only that his testimony before the Senate Committee was not admissible in evidence in his prosecution for conspiracy. It was held by the Supreme Court in the case of *Counselman v. Hitchcock*, 142 U. S. 547, 35 L. Ed. 1110, that such a statute does not give immunity so as to prevent a claim of self-incrimination. This holding was applied to the statute in the recent case of *United States v. Bryan*, 339 U. S. 323, 94 L. Ed. 884, where the Court said at page 893:

> "Respondent also contended at the trial that the court erred in permitting the Government to read to the jury the testimony she had given before the House Committee when called upon to produce the records. She relies upon Rev. Stat. §859, now codified in §3486 of title 18 U. S. C. A., F. C. A. title 18, §3486, which provides that 'No testimony given by a witness before * * * any committee of either House, * * * shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony * * *.' Admittedly her testimony relative to production of the books comes within the literal language of the statute; but the trial court thought that to apply the statute to respondent's testimony would subvert the congressional purpose in its passage. We agree.
>
> "We need not set out the history of the statute in detail. It should be noted, however, that its function was to provide an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought that witnesses could be compelled to give self-incriminating testimony. That purpose was effectively nullified in 1892 by this Court's decision in Counselman v. Hitch-

cock, 142 U. S. 547, 35 L. Ed. 1110, 12 S. Ct. 195, holding that Rev. Stat. §860, a statute identical in all material respects with Rev. Stat. §859, was not sufficient substitute for the constitutional privilege of refusing to answer self-incriminating questions. Under that decision, a witness who is offered only the partial protection of a statute such as §§859 and 860 — that his testimony may not be used against him in subsequent criminal proceedings — rather than complete immunity from prosecution for any act concerning which he testifies may claim his privilege and remain silent with impunity."

It is, of course, true that Title 2 U. S. C. A. Sec. 192 provides that if any person summoned as a witness to give testimony before any Committee of either House of Congress wilfully refuses to answer any question pertinent to the matter under inquiry, he shall be guilty of a misdemeanor, and Petitioner has relied upon this statute in defense of his argument that he was forced to testify before the Committee. This is patently not correct in view of the fact that Adams, although advised by counsel at the time refused to answer certain questions which were put to him, on the grounds of his constitutional immunity against self-incrimination, but answered numerous other questions freely and voluntarily, and now takes the position that such voluntary statements and admissions may not be used against him in the courts of Maryland. In the case of *United States v. Jaffee*, 98 Fed. Supp. 191, the defendant was charged with the violation of Section 192, *supra*, in that he refused to answer certain questions before the Committee on Foreign Relations of the United States Senate, on the ground that the answers would tend to incriminate him. The Court concluded "that the defendant had reasonable ground for apprehension that the testimony sought from him would expose him to prosecution for a conviction of a crime against the United States and having claimed the

privilege granted to him by the Fifth Amendment to the Constitution, he should not have been required to give such testimony". The Court felt that Section 3486, *supra*, did not give complete immunity in such a case, and relied upon the case of *Counselman v. Hitchcock, supra,* which it quoted as follows (p. 196 of 98 Fed. Supp.):

> "* * * It follows that any evidence which might have been obtained from Counselman by means of his examination before the grand jury could not be given in evidence nor used against him or his property in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture. This, of course, protected him against the use of his testimony against him or his property in any prosecution against him or his property, in any criminal proceeding, in a court of the United States. *But it had only that effect. It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him or his property, in a criminal proceeding in such court. It could not prevent the obtaining and the use of witnesses and evidence which should be attributable directly to the testimony he might give under compulsion, and on which he might be convicted, when otherwise, and if he had refused to answer, he could not possibly have been convicted.*
>
> *"The constitutional provision distinctly declares that a person shall not 'be compelled in any criminal case to be a witness against himself', and the protection of section 860 is not co-extensive with the constitutional provision."*

See also *United States v. Ralley*, 96 Fed. Supp. 495, and the above was considered by the Court of Appeals of Maryland in its opinion which may be found at page 101 of the Record in this case. The court also took occasion to note that there was sufficient evidence in this case to prove that Adams conspired to violate the lottery laws within the period of limitations, stating (at p. 103):

"If there were any doubt on this contention, it was removed by the introduction in evidence of the testimony that appellant gave before the United States Senate Crime Investigating Committee in Washington. He testified before that Committee that he did not give up the numbers business until May, 1950. He admitted that he had about ten men who brought in the money, and that he had a bookkeper who assisted him with the records.

"Appellant strongly objected to the introduction of the confession which he made before the Senate Committee. He argued that since he was subpoenaed to appear before that Committee, and since he could have been charged with a misdemeanor if he failed to appear, his confession was given under compulsion.

"The Bill of Rights, which applies only to the Federal Government, contains guaranties against oppressive proceedings in criminal prosecutions. The Fifth Amendment contains the Anglo-American concept of justice that no person shall be compelled in any criminal case to be a witness against himself. Likewise, Article 22 of the Maryland Declaration of Rights declares: 'That no man ought to be compelled to give evidence against himself in a criminal case.'

"In Henze v. State, 154 Md. 332, 347, 140 A. 218, the Court of Appeals held that the right of an accused person not to be compelled to give evidence against himself, as guaranteed by the Maryland Declaration of Rights, is not violated by the introduction in evidence of a confession which he voluntarily gave at a former trial for the same offense. The admissibility of testimony given at a former trial depends upon whether or not it was voluntary. To be admissible it must be voluntary, and where there is no evidence to the contrary it will be presumed that the testimony was voluntary."

It is respectfully submitted, therefore, that Petitioner, under the Federal decisions, could have asserted the privi-

lege of self-incrimination, and by not doing so, has effectively waived that privilege; that his testimony before the Senate Committee which was admitted into evidence against him in the conspiracy case was given willingly and voluntarily, for whatever reason he may have had, without relying upon the constitutional immunity which is provided him by law.

(2) It is elementary that the States have the power to establish rules of practice and procedure in State courts. It is likewise elementary that under the Tenth Amendment to the Constitution of the United States, the Federal Government has only those powers which are specifically enumerated, and such others as may be implied from a "fair construction of the whole instrument". *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579. There is nothing in the Constitution of the United States which expressly, or by implication, authorizes the Federal Government either by Act of Congress, or by judicial decision, to prescribe rules of evidence binding upon courts of the several States. It is conceivable that a rule of evidence as applied by a State court might violate the Due Process Clause of the Fourteenth Amendment to the Federal Constitution, but such a problem is not here presented.

The case of *People v. Kelley,* ..... Cal. ....., 122 Pac. 2d 655, discussed the power reserved to the States in matters of court procedure as follows:

> "Appellant contends that the Court committed prejudicial error in allowing police officers to testify to the contents of messages which came to the apartment over the telephone after they had gained entrance thereto. This contention is based upon the inhibitions of Sec. 605 of the Federal Communications Act of 1934, Title 47, U. S. C. A., which provides that *no person* not author-

ized by the sender shall intercept or divulge the contents of any communications to any person, and no person not being entitled thereto shall receive any intercepted communications by wire or radio. *Appellant proceeds upon the theory that an Act of Congress has the sanctity of a Congressional provision. This is so fundamentally erroneous as to make a refutation there of supererogation. Even though the Act of Congress is valid within the orbit of the activities of that department of the Government, the operation of the statute can affect only those subjects over which the central Government has jurisdiction.* * * * In matters involving solely procedure State Courts are not affected by Acts of Congress. Subject only to the limitations of the Federal Constitution, the State may establish its own procedure. * * * The purpose of the framers of the Federal Constitution was to establish a government which should be supreme within its own sphere of action, but which should not usurp any of the powers reserved to the States. *McCulloch v. Maryland,* 4 Wheat. 316, 4 L. Ed. 579. Accordingly, the state may regulate its own court procedure in accordance with the genius of its own laws and institutions, so long as it does not offend some vital principle, the protection and operation of which has been made a part of the organic law of the union. * * * In truth, the power of a state to regulate its own court procedure is substantially unrestricted by any power it has granted. *Jordan v. Massachusetts,* 225 U. S. 167." (Emphasis supplied.)

The case of *Salsburg v. State,* .... Md. ...., 94 A. 2d 280, 285, did not involve the question of the power of Congress to regulate procedure in State courts, but it did recognize that a State has the "right to control procedure in its courts (and) has the power to regulate the admissibility of evidence".

Petitioner relies upon the case of *Brown v. Walker,* 161 U. S. 591, 40 L. Ed. 819, for the proposition that Congress

has the power to control the admission of evidence in State courts under a statute granting immunity. There a statute which had been held not to furnish complete immunity in *Counselman v. Hitchcock, supra,* was amended so as to grant the complete immunity required by the *Counselman* case, and, as amended, provided that "no person shall be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or either of them or in any such case or proceeding". At the time of the *Counselman* decision, the statute simply provided immunity from criminal prosecutions. The question before the court in the case of *Brown v. Walker, supra,* was therefore whether the statute, as amended, furnished complete immunity so that a person who insisted upon his right to silence in the face of the statute could be held in contempt. The Supreme Court held that the statute furnished complete immunity so that a person could be compelled to testify and, in doing so, not be denied his rights under the Fifth Amendment to the Constitution of the United States. The contention was made by the defendant that Congress could not guarantee his immunity from a State prosecution. The majority opinion disposed of this contention as follows, at page 606 of 161 U. S.:

> "It is argued in this connection that, while the witness is granted immunity from prosecution by the Federal government, he does not obtain such immunity against prosecution in the state courts. We are unable to appreciate the force of this suggestion."

Four Judges dissented in two opinions from the majority opinion in the *Brown* case. Three of the dissenters joined in one opinion written by Justice Shiras, who said at page 623 of 161 U. S.:

> "It is indeed claimed that the provisions under consideration would extend to the state courts and might be relied on therein as an answer to such an indictment. We are unable to accede to such a suggestion. As Congress cannot create state courts, nor establish the ordinary rules of property and of contracts, nor denounce penalties for crimes and offenses against the states, so it cannot prescribe rules of proceeding for the State courts."

Justice Shiras then went on to show that the cases relied upon by the majority opinion as sustaining the right of Congress to determine procedure in State courts alike had dealt with statutes which were enacted under the War Power Clause of the Federal Constitution, and which dealt with the rebellious States at the end of the Civil War.

Petitioner has emphasized the dissenting opinion in the *Brown* case because it is felt that the later cases which have relied upon that case have leaned to the minority opinion on the question of whether Congress may require a State court to give effect to congressional immunity. In the case of *Hale v. Henkel*, 201 U. S. 43, 50 L. Ed. 652, Hale refused to testify relative to a suspected violation of the Sherman Act by the corporation by which he was employed. He was held in contempt by a Circuit Judge. The Supreme Court held that the statute granted a complete immunity as distinguished from the partial immunity granted by Title 18 U. S. C. A., Section 3486. Hale contended that the statute did not grant immunity from prosecution in a State court. The Supreme Court answered this contention, as follows, at page 68 of 201 U. S.:

> "The further suggestion that the statute offers no immunity from prosecution in the state courts was also fully considered in *Brown v. Walker*, and held to be no answer. The converse of this was also decided in *Jack*

v. Kansas, 199 U. S. 372, ante, 234, 26 Sup. Ct. Rep. 73, — namely, that the fact that an immunity granted to a witness under a state statute would not prevent a prosecution of such witness for a violation of a Federal statute did not invalidate such statute under the 14th Amendment. It was held both by this court and by the supreme court of Kansas that the possibility that information given by the witness might be used under the Federal act did not operate as a reason for permitting the witness to refuse to answer, and that a danger so unsubstantial and remote did not impair the legal immunity. Indeed, if the argument were a sound one it might be carried still further and held to apply not only to state prosecutions within the same jurisdiction, but to prosecutions under the criminal laws of other states to which the witness might have subjected himself. The question has been fully considered in England, and the conclusion reached that *the only danger to be considered is one arising within the same jurisdiction and under the same sovereignty.*" (Emphasis supplied.)

This holding is certainly a departure from the very affirmative language employed in the majority opinion in the case of *Brown v. Walker, supra.*

In the case of *United States v. Murdock,* 284 U. S. 141, 76 L. Ed. 210, the traverser was summoned to appear before an authorized revenue agent to answer certain questions relative to deductions made in his income tax. He refused to do so on the ground that he would incriminate himself under State law. He was held in contempt under a statute which made the failure to supply such information a misdemeanor. On appeal, the Supreme Court held that the privilege of silence is waived unless invoked, and that the traverser had waived the privilege for purposes of Federal prosecution, inasmuch as he based his claim of self-incrimination on the fear of prosecution under State law. The

Court held that such a claim was not within the self-incrimination provision of the Fifth Amendment to the Constitution of the United States, as follows, at page 149 of 284 U. S.:

> "The plea does not rest upon any claim that the inquiries were being made to discover evidence of crime against state law. Nothing of state concern was involved. The investigation was under federal law in respect of federal matters. The information sought was appropriate to enable the Bureau to ascertain whether appellee had in fact made deductible payments in each year as stated in his return, and also to determine the tax liability of the recipients. Investigations for federal purposes may not be prevented by matters depending upon state law. Const. art. 6, Sec. 2. The English rule of evidence against compulsory self-incrimination, on which historically that contained in the 5th Amendment rests, does not protect witnesses against disclosing offenses in violation of the laws of another country. *Two Sicilies v. Willcox,* 7 State Tr. N. S. 1050, 1068; *Reg. v. Boyes,* 1 Best. & S. 311, 330, 121 Eng. Reprint, 730. This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against compulsory self-incrimination. *Counselman v. Hitchcock,* 142 U. S. 547, 35 L. ed. 1110, 3 Inters. Com. Rep. 816, 12 S. Ct. 195; *Brown v. Walker,* 161 U. S. 591, 606, 40 L. ed. 819, 824, 5 Inters. Com. Rep. 369, 16 S. Ct. 644; *Jack v. Kansas,* 199 U. S. 372, 381, 50 L. ed. 234, 236, 26 S. Ct. 73, 4 Ann. Cas. 689; *Hale v. Henkel,* 201 U. S. 43, 68, 50 L. ed. 652, 663, 26 S. Ct. 370. * * * Federal criminal procedure is governed not

by state practice but by federal statutes and decisions of the federal courts."

A recent case which relied upon the case of *Brown v. Walker, supra,* is that of *Feldman v. United States Oil & Ref. Co.,* 322 U. S. 487, 88 L. Ed. 1408. There, the petitioner, a judgment debtor, was called a witness in a Court of New York and gave testimony under a New York immunity statute which provided that a debtor might not be excused from testifying because of self-incrimination, but that his testimony could not be used in a subsequent criminal proceeding against him. This testimony was later used in a Federal court on a charge of using the mails to defraud. He did not testify in the Federal court and was convicted upon the testimony given in the New York proceedings. The question before the Supreme Court on a writ of certiorari was whether the admission of testimony in a Federal prosecution was a denial of the petitioner's rights under the Fifth Amendment where the source of the testimony was a proceeding in a State court in which immunity had been granted under a State statute. The Supreme Court answered this question in the negative and said:

"* * * While the point has not been formally decided, we deem the answer to be controlled by a long series of decisions expressing basic principles of our federation.

"* * * for more than one hundred years, ever since *Barron v. Baltimore,* 7 Pet. (U. S.) 243, 8 L. ed. 672, one of the settled principles of our Constitution has been that these Amendments protect only against invasion of civil liberties by the Government whose conduct they alone limit. *Brown v. Walker,* 161 U. S. 591, 606, 40 L. ed. 819, 824, 16 S. Ct. 644, 5 Inters. Com. Rep. 369; *Jack v. Kansas,* 199 U. S. 372, 380, 50 L. ed. 234, 236, 26 S. Ct. 73, 4 Ann. Cas. 689; *Twining v. New Jersey,* 211 U. S. 78, 53 L. ed. 97, 29 S. Ct. 14. Conversely, a State cannot by operating within its constitutional powers

restrict the operations of the National Government within its sphere. *The distinctive operations of the two governments within their respective spheres is basic to our federal constitutional system, howsoever complicated and difficult the practical accommodations to it may be.* * * *

"This principle has governed a series of decisions which for all practical purposes rule the present case. When this Court for the first time sustained an immunity statute as adequate, it rejected the argument that because federal immunity could not bar use in a state prosecution of testimony compelled in a federal court, the immunity falls short of the constitutional requirement. *Brown v. Walker, supra,* (161 U. S. at 606, 40 L. ed. 824, 16 S. Ct. 644, 5 Inters. Com. Rep. 369). And when the reverse claim was made as to a state immunity statute, that a disclosure compelled in a state court could not assure immunity in a federal court, the argument was again rejected because, 'The state (anti-trust) statute could not, of course, prevent a prosecution of the same party under the United States (anti-trust) statute, and it could not prevent the testimony given by the party in the State proceeding from being used against the same person in a Federal Court for a violation of the Federal statute, if it could be imagined that such prosecution would be instituted under such circumstances.' *Jack v. Kansas, supra,* (199 U. S. at 380, 50 L. ed. 236, 26 S. Ct. 73, 4 Ann. Cas. 689).

"* * * Certainly it is not for New York to determine when, because it suits its local policy to employ testimonial compulsion, it will relieve from federal prosecution 'for or on account of any transaction, matter or thing concerning which' a New York court may have seen fit to require testimony. Such would be the practical result of sustaining petitioner's claim. The immunity from prosecution, like the privilege against testifying which it supplants, pertains to a prosecution in the same jurisdiction. Otherwise the criminal law of the United States would be at the hazard of careless-

> ness or connivance in some petty civil litigation in any state court, quite beyond the reach even of the most alert watchfulness by law officers of the Government. See Nardone v. United States, 308 U. S. 338, 84 L. ed. 307, 60 S. Ct. 266." (Emphasis supplied.)

In light of these decisions, it is obvious that the majority opinion in the case of *Brown v. Walker, supra,* has not been interpreted to mean that the Federal Government has the power to impose a rule of evidence upon a State court. To the contrary these later cases apparently assume that Congress has not such power and hold that the lack of such power does not make ineffective a Federal statute which grants *complete immunity from all prosecutions and forfeitures at the federal level* which might arise from the information secured under the immunity.

(3) Even assuming that Congress has the power to prescribe a rule of evidence to be applied in a State court, Section 3486 of Title 18 U. S. C. A. does not clearly manifest such an intention which is required by law. An excellent example analogous to the present situation is to be noted in the Federal Communications Act of 1943, 47 U. S. C. A., Section 605, which provides in part:

> "* * * *no person* not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication *to any person* * * *."

This statute has been construed by the Supreme Court as barring in Federal prosecutions the admission of evidence secured in a manner prohibited by the statute. *Nardone v. U. S.,* 302 U. S. 379, 82 L. Ed. 314; *Weiss v. United States,* 308 U. S. 321, 84 L. Ed. 298. However, Section 605 "does not apply to exclude such communications from evi-

dence in State courts". *Schwartz v. Texas,* 97 L. Ed. (Adv. Shts.) 157, 160; *Bratburd v. State,* ..... Md. ....., 88 A. 2d 446, 449; *McGuire v. State,* ..... Md. ....., 92 A. 2d 582, 584.

In the case of *Schwartz v. Texas, supra,* the Supreme Court refused to decide whether Congress has the power "to impose a rule of evidence on the state courts". Rather, it decided that the provision in Section 605 which is above set forth, did not manifest an intent by Congress to impose such a rule, and said:

> "We are dealing here only with the application of a federal statute to state proceedings. Without deciding, but assuming for the purposes of this case, that the telephone communications were intercepted without being authorized by the sender within the meaning of the Act, the question we have is whether these communications are barred by the federal statute, sec. 605, from use as evidence in a criminal proceeding in a state court.
>
> "* * * *If Congress is authorized to act in a field, it should manifest its intention clearly.* It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed.
>
> "The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the State of its authority as to matters not covered by the federal legislation is not to be implied unless the Act of Congress fairly interpreted is in conflict with the law of the State. Atchison, T. & S. F. R. Co. v. Railroad Commission, 283 U. S. 380, 392, 393, 75 L. Ed. 1128, 1136, 1137, 51 S. Ct. 553. See Savage v. Jones, 225 U. S. 501, 533, 56 L. Ed. 1182, 1194, 32 S. Ct. 715.
>
> *"It should never be held that Congress intends to supersede or by its legislation suspend the exercise of*

> *the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested.* Reid v. Colorado, 187 U. S. 137, 148, 47 L. Ed. 108, 114, 23 S. Ct. 92." (Emphasis supplied.)

It is submitted that there is a close analogy between Section 3486, *supra,* and the Federal Communications Act of 1943. Both contain provisions which would appear to be all inclusive. Section 3486 condemns the use of testimony (which is given before a Committee of Congress) *"in any court"*. Section 605, *supra,* provides that "no person" shall divulge intercepted communications "to any person". It is submitted that under the holding in *Schwartz v. Texas, supra,* Congress has not clearly manifested its intention that the immunity granted by Section 3486 is to be applied in State courts. It is to be presumed that when Congress employed the term "in any Court", the reference was to those courts over which Congress has traditionally had power. If Congress intends to attempt an extension of its traditional powers, the reference must be more specific.

(4) Petitioner contends that the testimony given by him before the Senate Crime Committee was inadmissible because it was in the nature of an involuntary confession given under compulsion, and as such is a violation of the Due Process Clause, in that it amounts to his being forced to give evidence against himself in a criminal case. This particular point was not raised in the trial court, but the objection was taken to the admissibility of the testimony on the basis that the Federal statute granted a complete immunity.

The testimony itself before the Senate Committee indicates that he was not under any compulsion to testify as he himself refused to answer certain questions and was

not forced to do so by the Committee, nor were any powers or penalties invoked as a result of his refusal to so testify.

There is no question in this case concerning obtaining a statement or confession by improper means. At the time he testified before the Senate Crime Committee, the matter under investigation did not involve any criminal charge against the Petitioner, and the matter under investigation was a Federal one. This Court, in the case of *Feldman v. United States Oil and Refining Co., supra,* ruled on an analogous contention as follows, at page 492 of 322 U. S.:

> "* * * The Government here is not seeking to benefit by evidence which it extorted. It had no power either to compel testimony in the state court or to forestall such disclosure as a means of avoiding possible interference with the enforcement of the federal penal code. Whether testimony in a New York court should be compelled in exchange for immunity from prosecution under the penal laws of New York is for New York to say. For what purposes the United States may deem the disclosure of testimony more important than prosecution for federal crimes is for Congress to say."

For Congress to indiscriminately allow evil-doers to appear before its Committees and unburden themselves by means of long recitals of previous misdeeds as the price of immunity to any prosecution arising out of those facts in any State would be a reduction to absurdity.

Petitioner has argued in his Brief in support of his Petition for the Writ of Certiorari, as stated, that the Court of Appeals has placed complete reliance in the case of *May v. United States,* 175 Fed. 2d 994. There is, of course, a distinction between the two cases. However, we do think that this case should have had substantial persuasive effect upon the Maryland court in so far as it determines that testi-

mony given voluntarily may be used against a person who testified before a Congressional Committee under proper interpretation of Section 3486 of Title 18 U. S. C. A. Exactly the same major decision was reached by this Court in the case of *United States v. Bryan,* 339 U. S. 323, 94 L. Ed. 884, in which the Court held that it would be silly to use the terminology of an Act of Congress to defeat the purpose which Congress intended by the Act. The case of *Brown v. Walker,* 161 U. S. 591, 40 L. Ed. 819, relied on by the Petitioner, is not applicable in that it involves an immunity statute in the Interstate Commerce Act, which grants an absolute immunity and is hence different from the statute involved in the present case.

Petitioner further argues that he has been convicted of an offense not cognizable under the Maryland law. This contention is distinctly untenable as the courts of Maryland have long held that conspiracy to violate the lottery laws may not only be prosecuted, but is a separate and distinct offense from the substantive crime of violating the lottery laws themselves. *Scarlett v. State,* ..... Md. ....., 93 A. 2d 753.

It is further urged that the court below has not determined a Federal question to be reviewed by this Honorable Court by way of certiorari; the decision of the State court has no effect on any prior ruling of the Supreme Court, nor has the decision of the State court infringed upon any provision of the Federal Constitution, and the evidence in the case was more than sufficient to prove the commission of the offense with which the Petitioner was charged beyond all reasonable doubt, with or without the admission of the testimony which he gave before the Senate Investigating Committee.

CONCLUSION

It is therefore respectfully submitted, for the reasons stated herein, that the Petitioner has been denied no right under the Constitution of the United States or any statute passed pursuant thereto, and that the Petition should therefore be denied.

Respectfully submitted,

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